H Watson v. Yolo County Flood Control and Water Conservation Dist.
E.D.Cal.,2007.

United States District Court,E.D. California.
Bob WATSON, Plaintiff,
v.
YOLO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, Defendant.
No. 2:06-cv-1549 FCD DAD.

Nov. 16, 2007.

Diane Elizabeth Aqui, Jordan Leonard and Aqui, Santa Rosa, CA, Karen Fuller Tynan, Walter Law Firm, Healdsburg, CA, for Plaintiff.
Terry Wills, Erick Corporon Turner, Stephen R. McCutcheon, Jr., Cook Brown LLP, Sacramento, CA, for Defendant.

MEMORANDUM AND ORDER

FRANK C. DAMRELL, JR., District Judge.
*1 This matter is before the court on defendant's motion for certification of this court's October 17, 2007 Order (the "Order") for interlocutory appeal under 28 U.S.C. § 1292(b) and for a stay of this action pending the appeal. Plaintiff Bob Watson ("plaintiff") opposes the motion. For the reasons set forth below, the court finds that defendant has met his burden of demonstrating that the court's Order involves a controlling question of law as to which there is substantial ground for difference of opinion, and that an immediate appeal may materially advance the ultimate termination of this litigation. Thus, pursuant to Section 1292(b), defendant's motion is GRANTED.FN1

FN1. Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. L.R. 78-320(h).

BACKGROUND

Defendant moved for summary judgment on plaintiff's claims for damages for allegedly unpaid minimum wages and overtime wages accrued during his employment as a damtender at the Indian Valley Dam at Indian Valley Reservoir in Yolo County, California. Defendant asserted, *inter alia,* that the irrigation exemption to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 213(b)(12), applied to plaintiff's position as a damtender, and thus, it was not required to pay plaintiff overtime wages. The irrigation exemption provides that the maximum hour requirements of the FLSA shall not apply to

any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, ... and which are used exclusively for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year.

29 U.S.C. § 213(b)(12) (West 2007).

In its Order, the court found that the irrigation exemption was inapplicable to plaintiff's case because the Indian Valley Reservoir is not used exclusively for the supply and storing of water. (Mem. & Order [Docket # 72], filed Oct. 17, 2007, at 14-15). Specifically, the court held:

In amending section 213(b)(12), Congress did not remove the term "exclusively" from the language of the statute. As such, the court must give this term force. *See Dole,* 909 F.2d at 351. By its definition, the term "exclusively" cannot and does not mean 90 percent. Therefore, these two statutory terms cannot be conflated.... A plain reading of the statute, giving force to each of the terms set forth by Congress, demonstrates that the term "exclusively" applies to the supply and storage component while the "90 percent" applies to the delivery component. Furthermore, the court's interpretation of the function of the term "exclusively" in § 213(b)(12) narrowly construes the section against defendant District. *See* Arnold, 361 U.S. 388 at 392, 80 S.Ct. 453, 4 L.Ed.2d 393 (1960)); *Cleveland,* 420 F.3d at 988;*Dole,* 909 F.2d at 352 (9th Cir.1990).

(Mem. & Order [Docket # 72] at 14). Based upon its interpretation of the statute, the court held that the irrigation exemption did not apply to plaintiff's position as a damtender.FN2

FN2. Because the defendant did not demonstrate that the Indian Valley Reservoir was used exclusively for the supply and storing of water, the court did not reach the issue of whether 90 percent of the water delivered was used for agricultural purposes. (*Id.* at 14-15). Plaintiff requested further discovery with respect to this issue. (*Id.* at 15).

***2** After review of defendant's other bases for its motion, the court granted in part and denied in part defendant's motion for summary judgment. Defendant now moves for interlocutory appeal of the court's October 17 Order as it relates to the interpretation of the irrigation exemption to the FLSA.

STANDARD

The general rule is that an appellate court should not review a district court ruling until after entry of a final judgment. *Coopers & Lyband v. Livesay,* 437 U.S. 463, 474, 98 S.Ct. 2454, 57 L.Ed.2d 351 (1978); *In re Cement Antitrust Litig.,* 673 F.2d 1020, 1026 (9th Cir.1982), *aff'd sub nom.Arizona v. Ash Grove Cement Co.,* 459 U.S. 1190, 103 S.Ct. 1173, 75 L.Ed.2d 425 (1983); *see*28 U.S.C. § 1291. There is, however, an exception to this general rule:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal for the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals ... may thereupon ... permit an appeal ... if application is made to it within ten days ....

28 U.S.C. § 1292(b). The party seeking certification of an interlocutory appeal has the burden to show the presence of those exceptional circumstances.*Coopers & Lybrand,* 437 U.S. at 474-75.

Section 1292 identifies three factors that must be present in order for the court to certify an appeal. First, the issue to be certified must involve a controlling issue of law. "Courts have refused to interpret the phrase so narrowly as to require that reversal of the district court's order terminate the litigation."*In re Cement Antitrust Litig.,* 673 F.2d at 1026 (citing *United States v. Woodbury,* 263 F.2d 784, 787 (9th Cir.1959)). Rather, an issue is "controlling" if "resolution of the issue on appeal could materially affect the outcome of litigation in the district court."*Id.* (citing *U.S. Rubber Co. v. Wright,* 359 F.2d 784, 785 (9th Cir.1966)). Second, there must be substantial ground for difference of opinion on that issue. A party's strong disagreement with the court's ruling is not sufficient for there to be a "substantial ground for difference;" the proponent of an appeal must make some greater showing. *Kern-Tulare Water Dist. v. Bakersfield,* 634 F.Supp. 656, 667 (E.D.Cal.1986), *aff'd in part and rev'd in part on other grounds,*828 F.2d 514 (9th Cir.1987). Third, an interlocutory appeal must be likely to materially speed the termination of the litigation. This factor is linked to whether an issue of law is "controlling" in that the court should consider the effect of a reversal by the court of appeals on the management of the case. *See In re Cement Antitrust Litig.,* 673 F.2d at 1026.

As to a stay of the pending action, Section 1292(b) states: "[A]pplication for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order."Thus, by statute, this court has authority to stay the proceedings pending an interlocutory appeal. This court also possesses the inherent power to control its own docket and calendar. "A district court has inherent discretion to control the disposition of the causes on its docket in a manner which will promote economy of time and effort for itself, for counsel, and for litigants."*Filtrol Corp. v. Kelleher,* 467 F.2d 242, 244 (9th Cir.1972) (quotations and citations omitted). In *Mediterranean Enterprises, Inc. v. Ssangyong Corp.,* the Ninth Circuit recognized:

***3** A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case. This rule ... does not require that the issues in such proceedings are necessarily controlling of the action before the court.

708 F.2d 1458, 1465 (9th Cir.1983) (citations omitted).

ANALYSIS

As to the first requirement for interlocutory appeal, defendant seeks certification for immediate interlocutory appeal on the singular issue of whether the irrigation exemption applies to plaintiff's position as a damtender at the Indian Valley Reservoir. The applicability of the exemption hinges on the interpretation of the language of § 213 of the FLSA and specifically, upon the meaning of the term "exclusive." The proper interpretation of the language of § 213 is a question of law. *See Ahrenholz v. Bd. of Trustees of Univ. of Ill.,* 219 F.3d 674, 676 (7th Cir.2000) (stating that "question of law" refers to a "question of the meaning of a statutory or constitutional provision").

That question of law is "controlling" within the meaning of Section 1292(b) because an interlocutory appeal would "materially affect the outcome of [the] litigation in [this court]."*In re Cement Antitrust Litig.,* 673 F.2d at 1026. Plaintiff contends that reversal of this court's decision would not necessarily be dispositive of the case due to unresolved factual issues relating to the 90 percent component of the exemption; however, termination of the litigation is not required to satisfy this element. *Id.* In this case, the applicability of the irrigation exemption is a threshold issue with respect to plaintiff's claim for unpaid overtime wages. Even if there is an issue of fact regarding whether 90 percent of the water was delivered for agricultural purposes,[FN3] the court would need to submit that question to the jury. Under the court's interpretation of § 213 as set forth in the October 17 Order, this is not currently an issue that would be presented to the jury. Further, if defendant's evidence relating to the 90 percent component is undisputed, the interpretation of the irrigation exemption is dispositive of the case; reversal of this court's order would terminate the litigation.

FN3. The court did not make any findings with respect to this component of the exemption because it was unnecessary in light of the court's interpretation of § 213.

For these same reasons, defendant has also demonstrated that the appeal will advance the ultimate termination of the litigation. The potential for bringing the litigation to a more expeditious close is related to the "controlling issue of law" factor for certification. *See id.*The court must consider the effect of a reversal by the court of appeals on the management of the case. *Id.* Here, a reversal of this court's Order could resolve this case in its entirety if defendant can present undisputed evidence that 90 percent of the water delivered was used for agricultural purposes. Further, even if a triable issue of fact is raise with respect to this element, the submission of this threshold issue to the jury will also advance the ultimate termination of the litigation.

*4 As to the final requirement for certification of interlocutory appeal, the court acknowledged in its Order that there was a paucity of relevant case law on the applicability of the irrigation exemption. (Mem. & Order [Docket # 72] at 12-13). The court specifically noted that the only federal case to address the interpretation of § 213 after it was amended in 1997 is an unpublished decision from the Eastern District of California. *See Avila v. Turlock Irrigation District,* 2006 WL 3437549 (E.D.Cal. Nov.27, 2006). However, the court's Order did not adopt the interpretation of § 213 set forth in *Avila.*As such, there is now an intra-district conflict with respect to the interpretation of the irrigation exemption to the FLSA.[FN4]Thus, the court finds that there is substantial ground for difference of opinion on the issue.

FN4. The court does not repeat its analysis of the irrigation exemption or its rationale for rejecting the court's rational in *Avila v. Turlock Irrigation District,* 2006 WL 3437549 (E.D.Cal. Nov.27, 2006). Such analysis is fully set forth in the Order.

Because a reversal of this court's Order by the Ninth Circuit could materially affect this case and advance the ultimate termination of litigation, the court stays this action in its entirety pending resolution of defendant's appeal of the Order. Said stay promotes economy of time and effort both for the court and the parties. *Filtrol Corp.,* 467 F.2d at 244.

CONCLUSION

For the foregoing reasons, the court finds that its October 17, 2007 Order, holding that the irrigation exemption to the FLSA is inapplicable to plaintiff's position as a dam-tender at the Indian Valley Reservoir, involves a controlling question of law as to which there is substantial ground for difference of opinion, and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation. As such, defendant's motion for certification of the court's October 17, 2007 Order for interlocutory appeal is GRANTED. The court stays this action in its entirety pending resolution of said appeal.

IT IS SO ORDERED.

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